

**Gabelli Merger Plus + SCA, SICAV-FIAR**

*Société d'investissement en capital variable - fonds d'investissement alternatif réservé sous forme d'une société en commandite par actions*

Registered office: 60, avenue J.F. Kennedy L-1855 Luxembourg

**INCORPORATION**

**Of 15 December 2016**

**Me DELOSCH**

**No 4149**

In the year two thousand and sixteen on the fifteenth day of the month of December,

Before Us, Maître **Edouard DELOSCH**, notary residing in Luxembourg, Grand Duchy of Luxembourg.

THERE APPEARED:

1. **Gabelli Merger Plus+ G.P. S.à r.l.**, a private limited liability company incorporated under the laws of Luxembourg, with registered office at 60, avenue J.F. Kennedy L-1855 Luxembourg, incorporated on 15 December 2016 and currently in the process of registration with the Luxembourg trade and companies register, here represented by John Birch, manager and duly authorized signatory of Gabelli Merger Plus+ G.P. S.à r.l. pursuant to its articles of incorporation (the **General Partner**);

2. **Gabelli & Partners, LLC**, a limited liability company established under the laws of the state of Delaware, with registered office at 2711 Centreville Rd, Suite 400, Wilmington, DE 19808 United States, incorporated on 14 April 2000 and registered at Corporation Service Company with company number 3212971, here represented by John Birch, professionally residing in Luxembourg, by virtue of a proxy given under private seal; such proxy, after signature ne varietur by the proxy holder and the undersigned notary, shall remain attached to the present deed to be filed with it

(together the **Shareholders**).

Such appearing parties, in the capacity in which they act, have requested the notary to record as follows the articles of association of a *société d'investissement à capital variable - fonds d'investissement alternatif réservé* under the form of a corporate partnership limited by shares (*société en commandite par actions*).

**1. Definitions.**

Capitalized terms shall have the meanings ascribed to them in these articles of incorporation (the **Articles**); any capitalized

terms not defined herein shall have the meanings ascribed to them in the prospectus of the Company (the **Prospectus**), unless inconsistent with the context, or otherwise specified. In the event of any inconsistency between the Prospectus and these Articles, these Articles will prevail.

## **2. Denomination and Form.**

2.1 There exists an investment company with variable capital – reserved alternative investment fund (*société d'investissement à capital variable - fonds d'investissement alternatif réservé*) under the form of a corporate partnership limited by shares (*société en commandite par actions*) under the name of "Gabelli Merger Plus + SCA, SICAV-FIAR" (the **Company**).

2.2 The Company shall be governed by the act of 23 July 2016 relating to reserved alternative funds, as amended (the **RAIF Law**) and by the act of 10 August 1915 on commercial companies, as amended (the **Companies Law**) (provided that in case of conflicts between the Companies Law and the RAIF Law, the RAIF Law shall prevail) as well as by these Articles.

## **3. Duration - Dissolution.**

3.1 The Company is formed for an unlimited period of time. The Company will however be automatically put into liquidation upon the termination of a compartment, if no further compartment is active at that time.

3.2 The Company may be dissolved with the consent of the General Partner (as defined below) by a resolution of the general meeting of shareholders (the **General Meeting**) adopted in the manner required for the amendment of these Articles, as prescribed in article 26 hereto as well as by the Companies Law.

## **4. Corporate Object.**

4.1 The exclusive purpose of the Company is to invest its funds in assets with the purpose of spreading investment risks and affording its shareholders (the **Shareholders** or individually a **Shareholder**) the results of the management of its assets to the fullest extent permitted under the RAIF Law but in any case subject to the terms and limits set out in the Prospectus.

4.2 Furthermore, the Company is entitled to take any action which may seem necessary or useful in order to achieve or to further the corporate purpose on the basis and within the limits of the RAIF Law.

## **5. Registered Office.**

5.1 The registered office of the Company is established in the municipality of Luxembourg-City, Grand Duchy of Luxembourg. It

may be transferred within the Grand Duchy of Luxembourg by a resolution of the General Partner.

5.2 The General Partner shall further have the right to set up branches, offices, administrative centers and agencies wherever it shall deem fit, either within or outside of the Grand Duchy of Luxembourg.

5.3 In the event that the General Partner determines that extraordinary political, economic or social developments have occurred or are imminent that would interfere with the normal activities of the Company at its registered office, or with the ease of communication between such office and persons abroad, the registered office may be temporarily transferred abroad until the complete cessation of these abnormal circumstances; such a temporary transfer of the registered office abroad will not affect the Company's valid existence under laws and regulations applicable in the Grand Duchy of Luxembourg (the **Luxembourg Law**).

## **6. Share Capital - Classes - Compartments - Form of Shares.**

6.1 The capital of the Company shall be represented by fully paid up shares (the **Shares** and individually a **Share**) of no par value and shall at any time be equal to the total net assets of the Company. The minimum capital, increased by the share premium (if any), shall be as provided by RAIF Law, i.e. one million two hundred and fifty thousand Euro (EUR 1,250,000) or the equivalent in any other freely convertible currency. The minimum subscribed capital increased by issuance premiums (if any) of the Company must be achieved within twelve months after the date on which the Company has been admitted to the list referred to article 25 of the RAIF Law.

6.2 The share capital of the Company shall be represented by the following classes of Shares (the **Classes** and individually a **Class**) of no par value:

- (a) The management share(s) (the **GP Share(s)**) which shall be reserved to the General Partner, as unlimited shareholder (*actionnaire gérant commandité*) of the Company and which gives its holder the right to receive a remuneration in accordance with the provisions of the Prospectus; and
- (b) The ordinary shares (the **Ordinary Shares**) which shall be subscribed by limited shareholders (*actionnaires commanditaires*), and, as the case may be, the General Partner as further described in the Prospectus.

- 6.3 The Company may further issue Special Voting Shares (as defined and described in the Prospectus) which may not be sold, disposed of or transferred, directly or indirectly, in any way.
- 6.4 The initial capital is USD 35,000 divided into 34 Ordinary Shares which will be allocated to Gabelli & Partners, LLC and 1 GP Share which will be allocated to Gabelli Merger Plus+ G.P. S.à r.l..
- 6.5 The General Partner shall determine if other different Classes, the specific features of which will be described in the Prospectus, will be issued.
- 6.6 The General Partner may decide for the listing of the Ordinary Shares on a regulated or unregulated market, either in Luxembourg or abroad.
- 6.7 The General Partner may establish portfolios of assets constituting each a compartment (each a **Compartment** and together the **Compartments**) within the meaning of article 49 of the RAIF Law with one Class or with multiple Classes. The investment objectives and restrictions of a relevant Compartment may differ from those of other Compartments. The features of a Class may differ from those of other Classes. Irrespective of the Compartments, the Company shall always be considered as one single legal entity. However, with regard to third parties, in particular towards the Company's creditors, each Compartment shall be exclusively responsible for all liabilities attributable to it. There will be no cross liability between the Compartments.
- 6.8 The share capital of the Company shall be increased or decreased as a result of the issue by the Company of new fully paid up Shares or the repurchase, as the case may be, of existing Shares from its Shareholders. Shares can furthermore be issued in series (the **Series**) representing all Shares of a Class issued on a specific date as further described in the Prospectus.
- 6.9 For the purpose of determining the capital of the Company, the net assets attributable to each Class shall, if not expressed in USD, be converted into USD. The capital of the Company equals the total of the net assets of all Classes and Series of all Compartments.
- 6.10 The Company shall issue Shares in registered form (*actions nominatives*) only.
- 6.11 All issued Shares of the Company shall be registered in the register of Shareholders which shall be kept by the Company or by one or more persons designated to that effect by the Company. This register shall contain the name of each

Shareholder, its residence or elected domicile as indicated to the Company and the number of registered Shares held.

- 6.12 The entry of the Shareholder's name in the register of Shares evidences the Shareholder's right of ownership over such registered Shares. The Company shall decide whether a certificate for such entry shall be delivered to the Shareholder or whether the Shareholder shall receive a written confirmation of the shareholding. Global certificates may also be issued at the discretion of the General Partner.
- 6.13 Share certificates, if any, shall be signed by the General Partner. Such signatures shall be either manual, or printed, or in facsimile. However, one of such signatures may be made by a person duly authorized thereto by the General Partner. In the latter case, it shall be manual. The Company may issue temporary share certificates in such form as the General Partner may determine.
- 6.14 The Ordinary Shares are, as a rule, freely transferable in accordance with the provisions of the law and the Prospectus. When a Shareholder has outstanding obligations vis-à-vis the Company, by virtue of its Application Form or otherwise, Ordinary Shares held by such Shareholder may only be transferred, pledged or assigned with the written consent from the General Partner, which consent shall not be unreasonably withheld in accordance with the provisions of the Prospectus. Any transfer or assignment of Ordinary Shares is subject to the purchaser or assignee thereof fully and completely assuming in writing prior to the transfer or assignment, all outstanding obligations of the seller under the application form (the **Application Form**) entered into by the seller or otherwise, unless otherwise foreseen by the Prospectus.
- 6.15 Any transfer of registered Shares shall become effective towards the Company and third parties (i) through the recording of a declaration of transfer into the register of Shares, signed and dated by the transferor and the transferee or their representatives and (ii) by the Company upon notification of the transfer to, or upon the acceptance of the transfer by the Company.

## **7. Issue and Subscription of Shares.**

- 7.1 The General Partner is authorized without limitation to issue the number of fully paid up Shares as determined in the Prospectus without reserving a subscription right to the existing Shareholders.
- 7.2 The General Partner may allow for fractional Ordinary Shares to be issued to the nearest thousandth of an Ordinary Share. Such fractional Ordinary Shares shall not be entitled to vote but shall be entitled to a participation in the net results and in the proceeds

of liquidation attributable to the relevant Class on a pro rata basis.

- 7.3 The General Partner may impose restrictions on the frequency at which Shares shall be issued; the General Partner may, in particular, decide that Shares shall only be issued during one or more subscription periods or at such other periodicity as provided for in the Prospectus.
- 7.4 The subscription of Ordinary Shares will only become effective upon the conclusion of the Application Form between the investor (the **Investor**) and the General Partner acting on behalf of the Company.
- 7.5 Subscription conditions and restrictions on ownership are determined as described in the Prospectus or the Application Form.
- 7.6 Whenever the Company offers Shares for subscription, the price per Share shall either be the net asset value (the **NAV**) per Share as determined under article 11 of these Articles or a price determined in accordance with the Prospectus. Such price may be increased by a percentage estimate of costs and expenses to be incurred by the Company when investing the proceeds of the issue and by applicable subscription fees, as determined by the General Partner. The price so determined shall be payable within a period as determined by the General Partner.
- 7.7 If subscribed Shares are not fully paid up, the General Partner may cancel their issue whilst retaining the right to claim its issue fees and commissions as further described in the Prospectus or in the Application Form.
- 7.8 The General Partner may agree to issue Shares as consideration for a contribution in kind in compliance with the conditions set forth under Luxembourg Law, in particular the obligation to deliver a valuation report from an auditor (*réviseur d'entreprises agréé*) and provided that such assets comply with the applicable investment objectives, restrictions and policies.

## **8. Redemption of Shares.**

- 8.1 The General Partner can have the Company make an offer to redeem Shares in accordance with the Prospectus.
- 8.2 Unless otherwise set out in the Prospectus, the Compartments are closed-ended. Consequently, the Company shall not repurchase the Ordinary Shares upon the request of the Shareholders.

## **9. Restrictions on ownership of Shares.**

- 9.1 The Company may restrict or prevent the ownership of Shares by any person, firm or corporate body, if in the opinion of the

Company such holding may be detrimental to the Company, if it may result in a breach of any law or regulation, whether Luxembourg or foreign, or if as a result thereof the Company may become exposed to tax disadvantages or other financial disadvantages that it would not have incurred otherwise (such persons, firms or corporate bodies to be determined by the General Partner being herein referred to as **Restricted Persons** as further described in the Prospectus).

9.2 The issue and sale of Shares is only allowed to well-informed investors in the meaning of article 2 of the RAIF Law (the **Well-Informed Investor**) being understood as:

- (a) Institutional investor;
- (b) Professional investor in the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (**MiFID**); or
- (c) Any other investor who (i) adheres in writing to the status of Well-Informed Investor and (ii) either (x) commits to invest a minimum of EUR 125,000 in the Company (or the same amount in any freely convertible currency) or (y) has been subject of an assessment made by a credit institution within the meaning of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, by an investment firm within the meaning of MiFID, or by a management company within the meaning of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), or by an AIFM certifying his expertise, his experience and his knowledge in adequately appraising an investment in the reserved alternative investment fund (RAIF).

9.3 The General Partner is entitled to impose stricter conditions as those required by article 2 of the RAIF Law.

9.4 For such purposes the Company may:

- (a) Decline to issue any Shares and decline to register any transfer of Shares, where it appears to it that such

registry or transfer would or might result in legal or beneficial ownership of such Shares by a Restricted Person; and/or

- (b) At any time require any person whose name is registered, or any person seeking to register the transfer of Shares on the register of Shareholders, to furnish it with any information, supported by affidavit, which the Company may consider necessary for the purpose of determining whether beneficial ownership of such Shareholder's Shares rests in a Restricted Person, or whether such registry will result in beneficial ownership of such Shares by a Restricted Person; and/or
- (c) Decline to accept the vote of any Restricted Person at any General Meeting; and/or
- (d) Retain all dividends paid or other sums distributed with regard to the Shares held by the Restricted Person; and/or
- (e) Where it appears to the Company that a Restricted Person either alone or in conjunction with any other person is a beneficial owner of Shares, direct such Shareholder to sell his Shares and to provide to the Company evidence of the sale. If such Shareholder fails to comply with the direction, the Company may compulsorily redeem or cause to be redeemed from any such Shareholder all Shares held by such Shareholder; and/or
- (f) Compulsorily redeem all Shares held by the Restricted Person at a price based on the latest calculated NAV, less a penalty fee equal to, in the absolute discretion of the General Partner, either (i) a percentage of the NAV of the relevant Shares determined by the General Partner and set out in the Prospectus or (ii) the costs incurred by the Company as a result of the holding of Shares by the Restricted Person (including all costs linked to the compulsory redemption). In case of compulsory redemption, the payment of the redemption proceeds will be made out of cash amounts available for distribution at the level of the Compartment to the Restricted Person. Any taxes, commissions and other fees incurred in connection with the abovementioned compulsory redemption or transfer will be charged by way of a reduction to the price to be paid to the Restricted Person.



9.5 For the avoidance of any doubt and to the fullest extent permitted by Luxembourg law, upon the listing of the Ordinary Shares on any stock exchange, any of the transfer restrictions imposed by this Article 9 or any other provision of these Articles, particularly those set out in Article 9.1 hereof, will no longer be operative in the event that continuing such provisions in force would violate the listing rules of any such exchange.

## **10. Preferential treatment**

10.1 The General Partner may, in its absolute and sole discretion, decide from time to time to accord a preferential treatment, or a right to obtain a preferential treatment (the **Preferential Treatment**) to relevant Investors subject to, and in compliance with the conditions set forth in applicable laws and regulations.

10.2 A Preferential Treatment may take the form of a contractual arrangement which may either be incorporated in the relevant Investor's Application Form or a side letter.

10.3 The General Partner will generally grant Preferential Treatments on the basis of the following objective criteria without the consent of the Investors:

- (a) Size, nature, timing or any feature of the Investor's investment in the relevant Compartment;
- (b) Type, category, nature, specificity or any feature of the relevant Investor itself; and/or
- (c) Involvement in, or participation to, the management or the activities (whether past, present and/or future) in relation to the relevant Compartment.

10.4 The Preferential Treatment may consist in:

- (a) Partial or total reimbursement or rebate of certain fees, charges and/or expenses;
- (b) Reduction or waiver of any applicable fees;
- (c) Access to, or increased transparency of, information related to certain aspects of the relevant Compartment;
- (d) Preferential terms applicable to any dealing in Shares;
- (e) Preferential terms in relation to any distribution; and/or
- (f) A "most favored nation" (or similar) right.

10.5 The General Partner may add other objective criteria and/or other forms of Preferential Treatment without the consent of the Investors, where possible to the extent it is not inconsistent with these Articles and/or with applicable laws and regulations.

10.6 Whenever an investor obtains a Preferential Treatment, a description of the Preferential Treatment, the type of Investors who obtain such preferential treatment and, where relevant, their legal or economic links with the Company or its AIFM, as well as any material change to this information, shall be disclosed or made available to Investors; it being understood that availability or disclosure of any information regarding Preferential Treatment may be restricted to the largest extent authorized by applicable laws and regulations.

## **11. Calculation of the NAV**

11.1 The Company, each Compartment and each Class and Series (if any) have a NAV determined in accordance with Luxembourg Law, subject to any adjustment required to ensure that Investors are treated fairly and in accordance with the Articles. The reference currency of the Company is the USD (the “**Reference Currency**”).

### **11.2 Calculation of the NAV**

- (a) The NAV of each Compartment, Class and Series shall be calculated in the Reference Currency of the Compartment, Class and Series as it is stipulated in the relevant Special Section in good faith in Luxembourg on each valuation date as stipulated in the relevant Special Section.
- (b) The Administrator shall under the supervision of the General Partner calculate the NAV as follows: each Class and Series participate in the Compartment according to the portfolio and distribution entitlements attributable to each such Class and Series. The value of the total portfolio and distribution entitlements attributed to a particular Class and Series of a particular Compartment on a given Valuation Date adjusted with the liabilities relating to that Class and Series on that Valuation Date represents the total NAV attributable to that Class and Series of that Compartment on that Valuation Date. The assets of each Class will be commonly invested within a Compartment but subject to different fee structures, distribution, marketing targets, currency or other specific features as it is stipulated in the relevant Special Section. A separate NAV per Share, which may differ as consequence of these variable factors, will be calculated for each Class as follows: the NAV of that Class of that Compartment on that Valuation Date divided by the total number of Shares of that

Class of that Compartment then outstanding on that Valuation Date.

- (c) For the purpose of calculating the NAV per Class/Series of a particular Compartment, the NAV of each Compartment shall be determined by calculating the aggregate of:
- (i) The value of all assets of the Company which are allocated to the relevant Compartment in accordance with the provisions of the Articles; less
  - (ii) All the liabilities of the Company which are allocated to the relevant Compartment in accordance with the provisions of the Articles, and all fees attributable to the relevant Compartment, which fees have accrued but are unpaid on the relevant Valuation Date.
  - (iii) The total net assets of the Company will result from the difference between the gross assets (including the market value of Investments owned by the Company and its intermediary vehicles, if any) and the liabilities of the Company based on a consolidated view, provided that
  - (iv) Equity or liability interests derived from these financial statements will be adjusted to take into account the fair (i.e., discounted) value of deferred tax liabilities as determined by the Company in accordance with its internal rules;
  - (v) Acquisition costs for Investments (including the costs of establishment of intermediary vehicle, as the case may be) shall be amortized over the planned strategic investment period of each of such Investment, as confirmed by the General Partner, or for a maximum period of five years rather than expensed in full when they are incurred; and
  - (vi) Set up costs for the Company and any Compartment shall be amortized over a maximum period of five years rather than expensed in full when they are incurred.

- (d) The General Partner, in its discretion and with prior approval of the AIFM, may permit some other method of valuation to be used if it considers that such valuation better reflects the fair value of any asset or liability of the Company in accordance with Luxembourg law. This method will then be applied in a consistent way. The Administrator can rely on such deviations as approved by the Company for the purpose of the NAV calculation.
- (e) All assets denominated in a currency other than the Reference Currency of the respective Compartment or Class shall be converted at the mid-market conversion rate between the reference currency and the currency of denomination as at the Valuation Date.

11.3 For the purpose of this Section 11:

- (a) Shares to be issued by the Company shall be treated as being in issue as from the time specified by the General Partner on the Valuation Date with respect to which such valuation is made and from such time and until received by the Company the price therefore shall be deemed to be an asset of the Company;
- (b) Shares to be redeemed shall be treated as existing and taken into account until the date fixed for redemption, and from such time and until paid by the Company the price therefore shall be deemed to be a liability of the Company;
- (c) Where, as of any Valuation Date, the General Partner contracted for the account of a relevant Compartment to:
  - (i) Purchase any asset, the value of the consideration to be paid for such asset shall be shown as a liability of the Compartment and the value of the asset to be acquired shall be shown as an asset of the Compartment;
  - (ii) Sell any asset, the value of the consideration to be received for this asset shall be shown as an asset of the Compartment and the asset to be delivered by the Compartment shall not be included in the assets of the Compartment;

provided, however, that if the exact value or nature of such consideration or such asset is not known as of

the applicable Valuation Date, then its value shall be estimated by the General Partner in good faith.

11.4 Assets and liabilities of the Company shall be allocated as follows:

- (a) The proceeds to be received from the issue of Shares of any Compartment or Class shall be applied in the books of that Compartment and Class, provided that if several Classes are outstanding in a Compartment, the relevant amount shall increase the proportion of the net assets of that relevant Class;
- (b) The assets and liabilities and income and expenditure applied to a Compartment shall be attributable to the Class or Classes corresponding to that Compartment;
- (c) Where any asset is derived from another asset, such asset shall be attributable in the books of the Company to the same Class or Classes as the assets from which it is derived and on each revaluation of such asset, the increase or decrease in value shall be applied to the relevant Class or Classes;
- (d) Where the Company incurs a liability in relation to any asset of a particular Class or particular Classes within a Compartment or in relation to any action taken in connection with an asset of a particular Class or particular Classes within a Compartment, such liability shall be allocated to the relevant Class or Classes within such Compartment;
- (e) In the case where any asset or liability of the Company cannot be considered as being attributable to a particular Class, such asset or liability shall be allocated to all the Classes pro rata to their respective NAVs or in such other manner as determined by the General Partner acting in good faith, provided that (x) where assets of several Classes are held in one account and/or are co-managed as a segregated pool of assets by an agent of the General Partner, the respective right of each Class shall correspond to the prorated portion resulting from the contribution of the relevant Class to the relevant account or pool, and (y) such right shall vary in accordance with the contributions and withdrawals made for the account of the Class, as described in the Prospectus, and finally (z) all liabilities, whatever Class they are attributable to, shall, unless otherwise agreed upon with the creditors, be binding upon the Company as a whole;

- (f) Upon the payment of distributions to the Shareholders of any Class, the NAV of such Class shall be reduced by the amount of such distributions.

#### 11.5 General rules

- (a) All valuation regulations and determinations shall be interpreted and made in accordance with Luxembourg Law.
- (b) The NAV as of any Valuation Date will be calculated to up to two decimal points.
- (c) The NAV as of any Valuation Date will be made available to Investors at the registered office of the Company as soon as it is finalized;
- (d) For the avoidance of doubt, the provisions of this Section 11 are rules for determining the NAV and are not intended to affect the treatment for accounting or legal purposes of the assets and liabilities of the Company or any Shares issued by the Company;
- (e) The General Partner may arrange for the release of the NAV in leading financial newspapers but cannot accept any responsibility for any error or delay in releasing or for non-releasing the NAV;
- (f) Different valuation rules may be applicable in respect of a specific Compartment as further laid down in the relevant Special Section.

### 12. **Temporary suspension of calculation of the NAV and/or of subscription**

12.1 The General Partner may at any time and from time to time suspend the determination of the NAV and/or the issue of Shares:

- (a) When one or more stock exchanges or markets, which provide the basis for valuing a substantial portion of the investments, or when one or more foreign exchange markets in the currency in which a substantial portion of the investments are denominated, are closed otherwise than for ordinary holidays or if dealings therein are restricted or suspended;
- (b) When, as a result of political, economic, military or monetary events or any circumstances outside the responsibility and the control of the General Partner, disposal of the investments is not reasonably or normally practicable without being seriously detrimental to the interests of the Shareholders;

- (c) In the case of a breakdown in the normal means of communication used for the valuation of any investment of the Company or if, for any reason beyond the responsibility of the General Partner, the value of any investment may not be determined as rapidly and accurately as required;
  - (d) If, as a result of exchange restrictions or other restrictions affecting the transfer of funds, transactions on behalf of the Company are rendered impracticable or if purchases and sales of the Company's assets cannot be effected at normal rates of exchange;
  - (e) When for any other reason, the prices of any investments within a Compartment cannot be accurately determined;
  - (f) Upon the release of a notice convening a General Meeting for the purpose of winding-up the Company;
  - (g) When the suspension is required by law or legal process; and/or
  - (h) When for any reason the General Partner determines that such suspension is in the best interests of Shareholders.
- 12.2 Any such suspension may be notified by the General Partner in such manner as it may deem appropriate to the persons likely to be affected thereby.
- 12.3 The suspension as to any Compartment or Class may have no effect on the calculation of the NAV per Share, the issue, redemption and conversion of Shares of any other Compartment or Class.
- 13. Investment Policy, Investment Restrictions, AIFM and Committees.**
- 13.1 The General Partner, based upon the principle of risk spreading, has the power to determine, inter alia, (i) the investment policy to be applied in respect of each Compartment, (ii) the restrictions which shall from time to time be applicable to the investment of the Compartments' assets, (iii) the hedging strategy to be applied to specific Classes within particular Compartments (iv) the course of conduct of the management and business affairs of the Company, all within the investment policies and restrictions and (v) the appointment of an external AIFM.
- 13.2 The General Partner, acting in the best interests of the Company, may decide, in accordance with the terms of the Prospectus, that (i) all or part of the assets of any Compartment be co-managed on a segregated basis with other assets held by other investors,

including other funds and/or their compartments, or that (ii) all or part of the assets of two or more Compartments be co-managed on a segregated or on a pooled basis.

- 13.3 The General Partner may establish one or more investment or advisory committees (each a **Committee**) dedicated to a relevant Compartment and determine the functions of such Committee including recommendations and advices in relation to the management and affairs of the Company in respect of the relevant Compartment. The denomination of the Committee and the rules concerning the composition, functions, duties, remuneration of the said committee shall be as set forth in the Prospectus.

**14. Liability of Shareholders.**

- 14.1 The owners of Ordinary Shares and Participating Shares are only liable up to the amount of their capital contribution made to the Company.

- 14.2 The General Partner's liability shall be unlimited.

**15. General Meetings.**

- 15.1 The annual General Meeting will be held each year in Luxembourg at the date specified in the convening notice to the General Meeting or as set forth in the Prospectus.

- 15.2 Other General Meetings may be held at such place and time as may be specified in the respective notices of meeting.

- 15.3 A representative of the General Partner shall chair all General Meetings.

- 15.4 Any Shareholder may participate in a General Meetings by conference call, video conference or similar means of communications equipment whereby (i) the Shareholders attending the General Meeting can be identified, (ii) all persons participating in the General Meeting can hear and speak to each other, (iii) the transmission of the General Meeting is performed on an on-going basis and (iv) the shareholders can properly deliberate, and participating in a General Meeting by such means shall constitute presence in person at such General Meeting.

- 15.5 The Shareholders of a Compartment may hold, at any time, General Meetings to decide on any matters that relate exclusively to such Compartment.

- 15.6 In addition, the Shareholders of any Class may hold, at any time, General Meetings to decide on any matters that relate exclusively to such Class.

**16. Notice, Quorum, Proxies, Majority.**



- 16.1 The notice periods and quorum rules required by the Companies Law shall apply with respect to the General Meeting, as well as with respect to the conduct of such meetings, unless otherwise provided in the Articles.
- 16.2 Each Share, other than fractional Shares, is entitled to one vote. A Shareholder may act at any General Meeting by appointing another person as his proxy in writing whether in original or by telefax, telegram or telex. One (1) person may represent several or even all Shareholders.
- 16.3 Except as otherwise required by law or by these Articles, resolutions at a General Meeting will be passed by a two thirds (2/3) majority of those present or represented and voting and with the consent of the General Partner.
- 16.4 The General Partner may determine all other conditions that must be fulfilled by Shareholders for them to take part in any General Meeting.
- 17. Convening Notice.**
- 17.1 The General Partner shall convene General Meetings. Convening notices for every General Meeting shall contain the agenda.
- 17.2 Notices by mail shall be sent eight (8) days before the General Meeting to registered Shareholders, at the Shareholder's address on record in the register of Shareholders. Such convening notice may be sent by means other than registered letters (such as e-mails).
- 17.3 If all the Shareholders are present or represented at a General Meeting, and if they state that they have been informed of the agenda of the General Meeting, the General Meeting may be held without prior notice.
- 18. Powers of the General Meeting.**
- Any regularly constituted General Meeting of the Company, a relevant Compartment or Class shall represent the entire body of the Company that Compartment or Class. It may only resolve on any item whatsoever with the agreement of the General Partner.
- 19. Management.**
- 19.1 The Company shall be managed by **Gabelli Merger Plus+ G.P., S.à r.l.** (the **General Partner**) and who shall be the unlimited shareholder (*actionnaire commandité gérant*) and who shall be personally, jointly and severally liable with the Company for all liabilities which cannot be met out of the assets of the Company.
- 19.2 The General Partner is vested with the broadest powers to perform all acts of administration and disposition in the Company's interest which are not expressly reserved by law or by

these Articles to the General Meeting. The Shareholders shall neither participate in nor interfere in the management of the Company.

- 19.3 The General Partner shall namely have the power to carry out the purpose of the Company on its behalf, to perform all acts, enter into and perform all contracts and other undertakings that it may deem necessary, advisable or incidental thereto.

**20. Depositary.**

- 20.1 The Company shall appoint a depositary as required by article 5 of RAIF Law (the **Depositary**).

- 20.2 Where the law of a third country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the delegation requirements under article 19(11)(d)(ii) of the 2013 Act, the Depositary can discharge itself of its liability provided that

- (a) The Company instructed the Depositary to delegate the custody of these financial instruments to the relevant local entity;
- (b) There is a written contract between the Depositary and the Company which expressly allows this discharge; and
- (c) There is a written contract between the Depositary and the third party that expressly transfers the liability of the Depositary to that local entity and makes it possible for the Company to make a claim against that local entity in respect of the loss of financial instruments or for the Depositary to make such a claim on their behalf.

- 20.3 Under the terms of the depositary agreement, each of the Company and the Depositary may terminate the depositary agreement by way of ninety (90) days prior written notice. It is to be noted that in the case of voluntary withdrawal of the Depositary or of its removal by the Company or in the case where the Depositary no longer fulfils the conditions set forth in paragraphs 2 and 3 of the Article 5 of the RAIF Law or in the case of insolvency of the Depositary, the General Partner must take all necessary measures in order to replace the Depositary by another depositary which fulfils the conditions required by the above-mentioned paragraphs in compliance with the RAIF Law.

- 20.4 If the Depositary has not been replaced within two (2) months, the General Partner shall, within three (3) months following the withdrawal of the Depositary, request the District Court dealing with commercial matters to pronounce the dissolution and liquidation of the Company in compliance with the RAIF Law.

**21. Authorized Signature.**

The Company shall be bound by the corporate signature of the General Partner or by the individual or joint signatures of any other persons to whom authority shall have been delegated by the General Partner. Such authority may not be conferred to a limited partner of the Company.

**22. Auditor.**

22.1 The annual report of the Company shall be examined by an auditor (*réviseur d'entreprises agréé*) appointed by the General Meeting and remunerated by the Company.

22.2 The auditor shall fulfill all duties prescribed by the Companies Law and the RAIF Law.

**23. Accounting Year - Accounts.**

23.1 The accounting year of the Company shall begin on 1 January and it shall terminate on 31 December of each year.

23.2 The accounts of the Company shall be expressed in USD.

**24. Application of Income.**

24.1 The General Meeting determines, subject to the approval of the General Partner and within the limits provided by law, the Articles and the Prospectus, how the income will be applied and may declare, upon the consent of the General Partner, distributions.

24.2 The General Partner may decide to pay interim dividends in accordance with applicable laws.

24.3 Distributions may be paid in such a currency and at such a time and place as the General Partner determines from time to time and in accordance with the Prospectus.

24.4 The General Partner may decide to distribute bonus stock in lieu of cash dividends.

24.5 Any distribution that has not been claimed within five (5) years of its declaration will be forfeited and revert to the relevant Class issued in the respective Compartment.

24.6 The Company will pay no interest on a dividend declared and kept by it at the disposal of its beneficiary.

**25. Merger, Dissolution and Liquidation of Compartments and of the Company; Liquidation or Merger of Compartments or Classes.**

25.1 In the event that, for any reason, the value of the total net assets in any Compartment or Class has decreased to, or has not reached, an amount determined by the General Partner to be the minimum level for such Compartment or Class to be operated in

an economically efficient manner or a substantial modification in the political, economic or monetary situation occurs or as a matter of economic rationalization the General Partner may decide to offer to the relevant Shareholders the conversion of their Shares into Shares of another Compartment under terms fixed by the General Partner to redeem all the Shares of the relevant Compartment or Class at the NAV per Share (taking into account projected realization prices of investments and realization expenses calculated on the Valuation Date immediately preceding the date at which such decision will take effect). The Company will serve a notice to the holders of the relevant Shares prior to the effective date for the compulsory redemption, which will indicate the reasons for and the procedure for the redemption operations.

- 25.2 Any request for subscription shall be suspended as from the moment of the announcement of the termination, the merger or the transfer of the relevant Compartment.
- 25.3 In addition, the General Meeting of any Class or of any Compartment will, in any other circumstances and without quorum and by simple majority, have the power, subject to the approval of the General Partner, to redeem all the Shares of the relevant Compartment or Class and refund to the Shareholders the NAV of their Shares (taking into account actual realization prices of investments and realization expenses) calculated on the Valuation Date immediately preceding the date at which such decision will take effect.
- 25.4 Assets which may not be distributed to their beneficiaries upon the implementation of the redemption will be deposited with a bank or credit institution for a period of six (6) months; after such period, the assets will be deposited with the *Caisse de Consignation* in Luxembourg on behalf of the persons entitled thereto.
- 25.5 Under the same circumstances as provided by the first paragraph of this article, the General Partner may decide to allocate the assets of any Compartment to those of another existing Compartment or to another undertaking for collective investment either organized under the RAIF Law, the act of 13 February 2007 on specialized investment funds, as amended or the act of 17 December 2010 concerning undertakings for collective investment, as amended or to another compartment within such other undertaking for collective investment and to re-designate the Shares of the Compartment concerned as shares of another compartment (following a split or consolidation, if necessary, and the payment of the amount corresponding to any fractional entitlement to Shareholders). Such decision will be communicated in the same manner as described in the first

paragraph of this article one (1) month before its effectiveness (and, in addition, the publication will contain information in relation to the new compartment), in order to enable Shareholders to request redemption of their shares, free of charge, during such period.

25.6 Subject to the approval of the General Partner, a contribution of the assets and liabilities attributable to any Compartment to another Compartment within the Company may, in any other circumstances, be decided upon by a General Meeting of the Compartment or Class concerned for which there will be no quorum requirements and which will decide upon such an merger by resolution taken by simple majority of those present or represented and voting at such General Meeting.

25.7 Furthermore, a contribution of the assets and liabilities attributable to any Compartment to another undertaking for collective investment referred in this article or to another compartment within such other undertaking for collective investment will require a resolution of the Shareholders of the Class or Compartment concerned taken with 50% quorum requirement of the Shares in issue and adopted at a 2/3 majority of the Shares present or represented, except when such an merger is to be implemented with a Luxembourg undertaking for collective investment of the contractual type (*fonds commun de placement*) or a foreign based undertaking for collective investment, in which case resolutions will be binding only on such Shareholders who have voted in favor of such merger.

#### **Winding Up**

25.8 The Company may at any time be dissolved by a resolution of the General Meeting, subject to the quorum and majority requirements for amendment to these Articles and subject to the consent of the General Partner.

25.9 If the assets of the Company fall below two-thirds of the minimum capital indicated in article 6.1, the question of the dissolution of the Company will be referred to the General Meeting of the Shareholders by the General Partner. Subject to the consent of the General Partner, the General Meeting, for which no quorum will be required, will decide by simple majority of the votes of the Shares represented at the General Meeting.

25.10 The question of the dissolution of the Company will further be referred to the General Meeting of the Shareholders whenever the share capital falls below one-fourth of the minimum capital set by article 6.1; in such event, the General Meeting will be held without any voting quorum requirements and the dissolution may be decided, upon the consent of the General Partner, by the

Shareholders holding one-quarter of the votes of the shares represented at the General Meeting.

- 25.11 The General Meeting must be convened so that it is held within a period of forty (40) days from the ascertainment that the net assets of the Company have fallen below two-thirds or one-quarter of the legal minimum, as the case may be.
- 25.12 Should the Company be voluntarily liquidated, then its liquidation will be carried out in accordance with the provisions of the Companies Law and the RAIF Law. In the event of a voluntary liquidation, the Company shall, upon its dissolution, be deemed to continue to exist for the purposes of the liquidation. The operations of the Company shall be conducted by one or several liquidators, who, after having been approved by the competent regulatory body, shall be appointed by a General Meeting, which shall determine their powers and compensation.
- 25.13 The decision to dissolve the Company will be published in the Luxembourg official gazette and, if required by law, in two newspapers with adequate circulation, one of which must be a Luxembourg newspaper.
- 25.14 If the Company were to be compulsorily liquidated, the provision of the RAIF Law will be exclusively applicable.
- 25.15 The issue of new Shares by the Company shall cease on the date of publication of the notice of the General Meeting of the Shareholders, to which the dissolution and liquidation of the Company shall be proposed.
- 25.16 The liquidator(s) will realize each Compartment's assets in the best interests of the Shareholders and apportion the proceeds of the liquidation of each Compartment, net of all liquidation expenses, shall be distributed by the liquidators among the holders of shares in each Class in accordance with their respective rights.
- 25.17 Any amounts unclaimed by the Shareholders at the closing of the liquidation of the Company will be deposited with the *Caisse de Consignation* in Luxembourg for a duration of thirty (30) years. If amounts deposited remain unclaimed beyond the prescribed time limit, they shall be forfeited.

**26. Amendments.**

These Articles may be amended from time to time by a General Meeting, subject to the quorum and voting requirements provided by Luxembourg Law, and subject to the consent of the General Partner.

**27. Applicable law.**

All matters not governed by these Articles shall be determined by application of the provisions of Luxembourg Law, and, in particular, the Companies Law and the RAIF Law.

#### **TRANSITORY PROVISIONS**

The first financial year shall begin today and it shall end on 31 December 2017.

The first annual General Meeting shall be held in 2018, in particular to approve the accounts of the first financial year.

#### **SUBSCRIPTION AND PAYMENT**

The Articles having thus been established, the above-named parties have subscribed the shares as follows:

SHAREHOLDER'S NAME	AMOUNT SHARES	OF
Gabelli Merger Plus+ G.P. S.à r.l., prenamed:		
GP Share:	1	
Gabelli & Partners, LLC, prenamed:		
Ordinary Shares	34	
<b>Total of GP Share:</b>	<b>1</b>	
<b>Total of Ordinary Shares:</b>	<b>34</b>	

All the GP Shares and Ordinary Shares have been fully paid up by contribution in cash, so that the paid-in share capital is at the free disposal of the Company, evidence of which has been given to the undersigned notary.

#### **STATEMENT AND ESTIMATION OF FORMATION EXPENSES**

The notary executing this deed declares that the conditions prescribed by article 26, 26-3 and 26-5 of the Companies Law have been fulfilled and expressly bears witness to their fulfillment. Further, the notary executing this deed confirms that these Articles comply with the provisions of article 27 of the Companies Law.

The appearing parties declare that the expenses, costs, fees or charges of any kind whatsoever, which fall to be paid by the Company as a result of its incorporation amount approximately to two thousand four hundred Euro (EUR 2,400.-).

The appearing parties, representing the entire subscribed share capital and considering themselves as having been duly convened, immediately proceeded to the holding of a General Meeting.

Having first verified that the General Meeting was regularly constituted, the Shareholders passed with the consent of the General Partner, the following resolutions by unanimous vote that:

- The purpose of the Company has been determined and that the Articles have been set;

- Deloitte Audit has been appointed as the external auditor of the Company; and
- The address of the registered office of the Company be at 60, avenue J.F. Kennedy L-1855 Luxembourg, Grand Duchy of Luxembourg.

In witness whereof we, the undersigned notary, have set our hand and seal on the day and year first hereabove written. The document having been read to the proxy holder of the appearing parties, said proxy holder signed together with us, the notary, the present original deed.

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(signé) J. BIRCH, DELOSCH.

Enregistré à Luxembourg Actes Civils 1, le 16 décembre 2016

Relation : 1LAC/2016/40220

Reçu soixante-quinze (75.-) euros

Le Receveur, (s) : P. MOLLING

Pour expédition conforme, délivrée aux fins de la publication au RESA.

Luxembourg, le 06 janvier 2017  
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